

**RULES
OF
GEORGIA DEPARTMENT OF HUMAN SERVICES

CHAPTER 290-7-1
RECOVERY AND ADMINISTRATION OF CHILD SUPPORT**

PROPOSED RULE AMENDMENTS

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290-7-1-.04 Establishment of Child Support Obligation

(b) Genetic Testing

- (1) In accordance with Georgia law as amended in 2015, genetic testing will be required in any case in which paternity is at issue and a child support obligation has not previously been established. In such instances, the Department will issue an order for genetic testing, which will be provided to both putative parents of the child at issue. The order shall specify the time and place for genetic samples to be obtained. An applicant for services who fails to comply with the order for genetic testing is failing to cooperate with the Department, and his/her case is subject to administrative closure. An application will not be deemed complete unless accompanied by an applicant's sworn statement alleging or denying paternity. The sworn statement is required by law, O.C.G.A. § 19-147-43(e), and is needed to provide the foundation that the efforts to establish paternity and child support are proceeding against the proper party. A defendant in a paternity case who fails to comply with the departmental genetic testing order shall be held to have waived any right to genetic testing in the litigation prior to the completion of genetic testing, in which case the testing shall take place as ordered by the court. Genetic testing will not be pursued in cases involving adoption or the use of reproductive assistance techniques which would negate biological relations (such as embryo donation, egg donation, sperm donation, etc.). The

cost of genetic testing shall be cast upon the defendant if the results show that the defendant is the biological parent of the child.

290-7-1-.08 Federal and State Tax Refund Intercept Program

(a) As used in this Rule, the following terms shall have the following meaning:

- (1) "tax refund intercept program" also known as "tax offset program"; the program through which tax refunds are intercepted to satisfy support obligations that are in arrears.
- (2) "tax offset processing year" the year that tax refunds are actually sent to the taxpayer. For example, a name certified for tax offset in September 2009 is certified for the 2010 "tax offset processing year."
- (3) "legitimately in dispute" used to denote that the obligor has presented cancelled checks, copies of money orders, court records, court orders, etc., which appear to refute the claim by the obligee that support payments have been missed. The obligor's "word" that he or she has made the payments is not sufficient evidence that support payments have been made. The term is not intended to convey the settlement of the dispute. Ultimately, the court issuing the child support order will have to determine what is actually owed.
- (4) "federal tax offset fee" a fee of \$15.00 will be deducted each time a federal tax offset payment is received.
- (5) "TANF arrearage" past-due support debts which accrued during the time an obligee or child receives TANF assistance (including foster care); except that if the obligee or child no longer receives TANF, the past-due support certified as a "TANF arrearage" must be limited to the debt owed to the State of Georgia.
- (6) "non-TANF arrearage" past-due support owed to obligees or nonparent custodians of qualified children or a qualified child and the parent with whom the child is living if the same support order includes support for the child and the parent. A qualified child is a child who is a minor and for whom an order is in force.
- ~~(7) "affidavit of past due support" in the absence of a court order adjudicating the arrears, the obligee must sign an affidavit which itemizes all missed support payments. The statement will serve as the basis for documenting past due support until such time as a court rules on the matter and may be admitted as evidence.~~

(87) "state tax offset fee" a fee of \$12.00 will be deducted each time a state tax offset payment is received.

(b) Eligible Cases

(1) Intercept enforcement remedies may be used for cases which involve a delinquent court or administrative ordered amount of child support and the State has an assignment of rights to support as a result of the receipt of TANF public assistance or the non-TANF recipient of services has made application for or is otherwise receiving IV-D enforcement services. Requirements for the various programs are provided below:

(A) TANF (including Foster Care) Tax Offset Certification Requirements

- (i) The support obligation must have been established by court order or an administrative order from a IV-D agency of competent jurisdiction.
- (ii) The TANF arrearages must be at least \$150.00 for tax offset.
- (iii) The arrearages must be at least \$500.00 for state tax offset regardless of case type.
- (iv) Before submittal, the Department or the Department of Family and Children Services has verified the accuracy of the obligor's name and social security number and the amount of past-due support for which there is a TANF assignment in effect.
- (v) The Department has a copy of the payment record ~~or an affidavit completed in the manner prescribed by the Department and signed by the obligee attesting to the amount of support owed.~~
- (vi) The validity of the debt is not legitimately in dispute.
- (vii) In intergovernmental cases, the federal certification can only be made by the state which has the TANF assignment. Any enforcing state must be advised that the obligor's name is being certified for federal refund offset. It may also be necessary to communicate with the enforcing state for purposes of verification of arrears, obtaining a copy of the payment record, etc.

(B) Non-TANF (including Foster Care) Tax Offset Certification Requirements

- (i) The obligee (including a nonparent custodian) must have applied for the child support services. The support obligation must have been established by court order or an administrative order from a IV-D agency of competent jurisdiction.
- (ii) The non-TANF arrearages must be at least \$500.00 for Federal and State certification. (NOTE: If the obligee currently receives TANF, all arrearages are certified under the TANF category. If the obligee previously received TANF, but does not currently receive it, the debt due the Department must be certified under the TANF category. Any remaining arrearages due the obligee would be certified under the non-TANF category.)
- (iii) The validity of the arrearage is not legitimately in dispute.
- (iv) In intergovernmental cases, the federal certification can only be made by the state where the obligee resides or has made application for child support services. Any enforcing state must be advised that the obligor's name is being certified for federal refund offset. It may also be necessary to communicate with the enforcing state for purposes of verification of arrears, obtaining a copy of the payment record, etc.
- (v) Before submittal, the Department has verified the accuracy of the obligor's name and SSN and the amount of delinquent support.
- (vi) The Department has a copy of the order and any modifications and has a copy of the payment record ~~or an affidavit completed in the manner prescribed by the Department and signed by the obligee attesting to the amount of support owed.~~
- (vii) TANF and foster care records have been checked to see if there is an arrearage amount owed to the State of Georgia.
- (viii) The department has the obligee's current address.

(c) Notice and appeal rights

- (1) Prior to certifying a tax intercept to either the Internal Revenue Service or the Georgia Department of Revenue, ~~the Department must send written notice must be provided to the obligor by first-class mail at the address known to the Department.~~ An obligor notified of a planned tax intercept who wishes to contest the certification of the intercept must request an administrative hearing within 30 days of the date of the written notice. If no written request for a

hearing is received by the Department within 30 days of the date of the written notice, the Department ~~shall certify will not stop~~ the tax intercept. ~~It shall not be deemed timely for an obligor to request review after a tax intercept has already taken place.~~

- (2) If an obligor timely seeks administrative review of the planned tax certification, the Department shall, within 21 days of receipt of the written request, initiate an administrative hearing before OSAH (see Rule 290-7-1-.19).
- (3) Federal regulations require the Department to initiate a pre-offset hearing if timely requested by an obligor. See 45 C.F.R. §§ 303.102, 303.72.
- (4) Upon receipt of notice that a federal or state tax refund has been offset, the obligor may contest the offset by requesting an administrative hearing. The request must be received by the Department within 30 days of the mailing of the notice.
- (d) Under no circumstances shall any tribunal hearing a tax intercept appeal retroactively reduce or modify child support arrears.
- (e) If an obligor in a case being enforced by the Department relocates without notifying the Department of his or her new address, the obligor shall be deemed to have waived his or her right to any written notices otherwise required by this Rule.
- (f) An administrative hearing and any appeal therefrom under this Rule shall be held in accordance with the procedures set forth at Rule 290-7-1-.19.

290-7-1-.13 Intergovernmental Child ~~Support~~ Support Proceedings UIFSA

290-7-1-.14 Collection and Disbursement of Child Support Payments

- (h) An erroneous payment may be the result of an agency error. The Department has the responsibility to collect all erroneous payments. Collection methods which may be utilized to recover the payments are through voluntary repayment plans, income tax offset, recoupment from future support payments, referral to a collection agency and/or through legal action. Repayment may be accepted in a lump sum or in negotiated payments. These may be in the form of cash, personal check, income tax intercepts, or money orders. The use of tax intercept for cases involving agency error will be done as permitted under these Rules for collection of debts owed to the Department.

- (i) The date_of collection for support is the date of receipt by the Family Support Registry.

290-7-1-.15 Allocation and Redirection of Current Child Support Payments

- (b) *Redirection:* The purpose of the CSRA is to ensure the support of a child or children, not the custodial parent/obligee. Therefore, it is the policy of the Department that the money shall follow the child(ren). If the Department has a good faith belief that a child is in the physical custody of a relative or other caretaker other than the obligee, the Department is authorized to redirect support payments to that caretaker of the child until such time as the child returns to the physical custody of the obligee.
 - (1) In a case where a child is in the physical custody of an obligor, the Department may refrain from enforcement of the current support amount. Any arrears owed to the obligee or to the state may continue to be collected.
 - (2) In a case involving multiple children, the Department may redirect a proportion of the payment received to the caretaker. For example, if a support order involving three children requires a monthly payment of \$300 and one child is proved to be in the physical custody of a caretaker other than the obligee, the Department may redirect one-third (\$100) to that caretaker.
 - (3) An obligee wishing to contest this redirection is entitled to an administrative hearing if he or she requests same within 30 days of notice of the redirection. The sole issue at such hearing shall be the physical custody of the child. The Department must retain evidence supporting the Department's belief that there was a change in physical custody. Examples of such evidence include school records, day care records, medical records, statements signed under penalty of perjury, public assistance grant information, guardianship records, or a court order.

Authority: O.C.G.A. Secs. 19-6-17, 19-6-33.1, 19-11-4 through 19-11-8, 19-11-18, 19-11-21, 19-11-30.1, 19-11-30.10, 19-11-32, 19-11-100, 50-13-1 et seq.